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Jones Day Reavis & Pogue North Point 901 Lakeside Avenue Cleveland, OH 44114			EXAMINER PIAZZA CORCORAN, GLADYS JOSEFINA	
			ART UNIT 1733	PAPER NUMBER

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/720,525

Applicant(s)

DIETRICH ET AL.

Examiner

Gladys J Piazza Corcoran

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 97-116 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 97-116 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

FINAL ACTION

Drawings

1. The drawing corrections filed on February 10, 2004 have been approved.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 109-116 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 109 recites that "a tray part is initially erected in an erection mold (316)" and then recites that "the preformed tray part is held in an assembly mold (316, KS Fig. 18)." It appears that the scope of the claim encompasses two different molds for the erecting and the assembling. However, the Specification only provides support for erecting and assembling the tray part in a single mold (316). It is suggested to amend the claims to recite a first mold (316).

4. Additionally, claims 109-116 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for erecting and assembling in a single mold (316), does not reasonably provide enablement for erecting and assembling in an erecting mold and then in an assembling mold separate from the erecting mold. The

Art Unit: 1733

specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. The independent claim separately recites that "a tray part is initially erected in an erection mold (316)" and then recites that "the preformed tray part is held in an assembly mold (316, KS Fig. 18)." However, the Specification only enables one of ordinary skill in the art to erect and assemble the tray with the collar in the same mold.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 97-116 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 97 recites the limitation "the tray peripheral wall" in lines 6 and 7. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to - the tray peripheral sidewall--.

8. Claim 98 recites the limitation "said sidewall forming portions" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to -said tray sidewall forming portions--.

9. Claim 98 recites the limitation "the molds" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to --the first and second molds--.

Art Unit: 1733

10. Claim 98 recites the limitation "the peripheral sidewall" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to -the tray peripheral sidewall--.

11. Claim 101 recites the limitation "said peripheral wall" in lines 1 and 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to -said tray peripheral sidewall--.

12. Claim 102 recites the limitation "the sidewall forming portions" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to --the tray sidewall forming portions--.

13. Claim 102 recites the limitation "the peripheral sidewall" in line 4. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to -the tray peripheral sidewall--.

14. Claim 102 recites the limitation "the peripheral wall" in lines 4 and 6. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to -the tray peripheral sidewall--.

15. Claim 103 recites the limitation "the peripheral sidewall" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to -the tray peripheral sidewall--.

16. Claim 104 recites the limitation "the tray peripheral wall" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to - the tray peripheral sidewall--.

Art Unit: 1733

17. Claim 108 is unclear by reciting "capable of being separately handled." The scope of the limitation appears to be unclear; it is unclear what Applicant intends to claims. There is no explanation in the specification of what the limitation encompasses. It is suggested to delete the limitation from the claim as it does not appear to further add anything to the claim.

18. Claim 109 recites the limitation "the bottom" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to --the bottom of the preformed tray part--.

19. Claim 109 is unclear by reciting "capable of being separately handled." The scope of the limitation appears to be unclear; it is unclear what Applicant intends to claims. There is no explanation in the specification of what the limitation encompasses. It is suggested to delete the limitation from the claim as it does not appear to further add anything to the claim.

20. Claim 111 recites the limitation "the peripheral wall" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to --the peripheral sidewall--.

21. Claim 115 recites the limitation "the step of bending the tray sidewall forming portions relative to the tray bottom forming portion" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to --the step if erecting the tray part--.

Claim Rejections - 35 USC § 102

22. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

23. Claims 97, 102, 104-107 are rejected under 35 U.S.C. 102(b) as being anticipated by Andersson et al. (US Patent No. 4,019,675).

Andersson discloses a method for assembling a food package tray by providing a cutout blank (cardboard blank) having a central tray bottom forming portion (1), and tray sidewall forming portions (2, 3, 4, 5) outwardly of the tray bottom forming portion, bending the tray sidewall forming portions relative to the tray bottom forming portion to form a preformed tray having a tray bottom and a tray peripheral sidewall extending upwardly from the tray bottom (column 2, lines 29-30), positioning a flange forming annular collar (frame 12) on the tray peripheral wall (column 2, lines 31-32), and bonding the collar to the tray peripheral wall to provide the tray with an outwardly extending peripheral flange (column 1, line 14-19).

As to claim 102, Andersson discloses providing the blank with flange forming portions (7, 8, 9, 10) outwardly of the sidewall forming portions and the bending step is carried out by bending the flange forming portions to extend outwardly from the peripheral sidewall so that the upper end of the peripheral sidewall on the preformed tray terminates in outwardly extending flange portions (see figures), and said steps of positioning and bonding the flange forming collar to the peripheral wall are carried out

Art Unit: 1733

by positioning the collar against and bonding the same to the outwardly extending flange portions on the tray peripheral sidewall (see figures). As to claim 104, the tray peripheral sidewall has an upper end and the step of positioning the flange forming annular collar is carried out by positioning the annular collar to provide an outwardly extending flange adjacent the upper end of the tray peripheral wall (see figures). As to claim 105, the collar and the tray peripheral sidewall have facing surfaces and the step of bonding is carried out by bonding the facing surfaces together with adhesive located between the facing surfaces (see figures, attached by gluing; column 1, line 14-19; column 2, lines 31-32). As to claims 106 and 107, the preformed tray has a tray bottom and a tray peripheral sidewall with a plurality of adjacent sidewall segments (2, 3, 4, 5) with overlapping tabs (6) that connect the adjacent sidewall segments extending upwardly from the tray bottom (1).

24. Claims 97, 100 are rejected under 35 U.S.C. 102(b) as being anticipated by Chazal (US Patent No. 4,533,065).

Chazal discloses a method for assembling a food package tray (column 1, lines 1-27) by forming a cutout blank having a central tray bottom forming portion and tray sidewall forming portions outwardly of the tray bottom forming portion (blank 11, column 3, lines 35-45, column 4, lines 1-3), bending the tray sidewall forming portions relative to the tray bottom forming portion to form a preformed tray having a tray bottom and a tray peripheral sidewall extending upwardly from the tray bottom (column 4, lines 4-19), positioning a flange forming annular collar on the tray peripheral wall (blank 10, column 3, lines 65-68, column 4, lines 4-19), and bonding the collar to the tray peripheral wall to

Art Unit: 1733

provide the tray with an outwardly extending peripheral flange (rim, column 4, lines 30-42, column 12, lines 19-21). As to claim 100, the bonding is with a hot melt adhesive (thermoformed plastic adheres the layers together).

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

27. Claims 98, 103, 108, 109, 111-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson et al. (US Patent No. 4,019,675) as applied to claims 97 above, and further in view of Beamish (US Patent No. 3,104,012).

Andersson discloses that the blank is raised into shape in the conventional way, however does not specifically disclose how the blank is bent or how the collar is positioned on the blank (column 2, lines 29-32). It is well known in the art to bend or

Art Unit: 1733

erect blanks in a mold and to attach reinforcing members to the raised blanks on a second mold where at least one of the molds is moved toward the other in order to correctly position the reinforcement member on the raised blank. For example, Beamish discloses a known method of raising a blank to form a tray similar to the one in Andersson by bending the blank in a first mold (column 2, lines 8-15), positioning a reinforcing member in a second mold (column 2, lines 21-24) and then moving one of the molds toward the other to position the reinforcing member on the bent blank (column 2, lines 24-30). It is noted that the particular reinforcing member in Beamish is provided on the bottom of the raised blank, therefore the blank is removed from the first mold and supported by the second mold while the reinforcement members are placed in the first mold and then the two molds are moved toward each other to position the reinforcing members on the raised blank. However, it would have been well within the purview of one of ordinary skill in the art to leave the raised blank in the first mold and to position the collar on the second mold prior to moving the molds together when producing the tray and collar as shown in Andersson, only the expected results would be attained. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the tray as shown in Andersson by bending the tray blank and positioning and bonding the collar on the tray blank in a conventional manner by bending the tray in a first mold and positioning the collar on a second mold and moving at least one mold towards the other as is well known in the art and exemplified by Beamish.

Art Unit: 1733

As to claim 111, Andersson discloses providing the blank with the peripheral wall having outwardly extending flange portions (7, 8, 9, 10) and said steps of positioning and bonding the collar to the peripheral wall are carried out by positioning the collar against and bonding the same to the outwardly extending flange portions (see figures). As to claim 112, Andersson discloses that the tray peripheral sidewall has an upper end and the step of positioning the flange forming annular collar is carried out by positioning the annular collar to provide an outwardly extending flange adjacent the upper end of the tray peripheral wall (see figures). As to claim 113, Beamish discloses using the same mold for erecting and assembling. As to claim 114, the collar and the tray peripheral sidewall have facing surfaces and the step of bonding is carried out by bonding the facing surfaces together with adhesive located between the facing surfaces (see figures, attached by gluing; column 1, line 14-19; column 2, lines 31-32). As to claims 115 and 116, the preformed tray part has a tray bottom and a tray peripheral sidewall with a plurality of adjacent sidewall segments (2, 3, 4, 5) with overlapping tabs (6) that connect the adjacent sidewall segments and extend upwardly from the tray bottom (1).

28. Claims 99-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson et al. (US Patent No. 4,019,675) as applied to claims 97 above, and further in view of conventional practice.

Andersson discloses bonding the collar to the tray by gluing, but does not disclose the particular type of adhesive. It is considered conventional in the art to bond paperboard parts of containers and trays with either a cold adhesive or a hot melt

Art Unit: 1733

adhesive. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the tray as shown in Andersson by bonding with conventionally used adhesives such as cold and hot melt adhesives, only the expected results would be attained.

29. Claim 99, 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chazal et al (US Patent No. 4,533,065) as set forth above in claim 97, and further in view of Albano et al. (US Patent No. 4,007,670).

Chazal discloses using a thermoformed layer 2 to adhere the cutout blank to the annular collar in addition to providing the interior of the container with a synthetic material. It is well known in the art to bond blanks for forming food containers by providing glue between the parts in order to secure the parts together. For example, Albano discloses providing glue between parts for forming containers in order to secure the parts together. As to whether the glue is a cold adhesive, such adhesives are well known in the art and would have been well within the purview of one of ordinary skill in the art to select depending upon the materials used and the use of the end product. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of forming a food tray as shown in Chazal by providing a cold glue to bond the blank and the collar together in order to secure the parts together prior to thermoforming the interior layer as is well known in the art and further exemplified by Albano, only the expected results would be attained.

Allowable Subject Matter

30. Claims 101, 110 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

31. The following is a statement of reasons for the indication of allowable subject matter: Absent any additional prior art, no prior art was found to show or suggest a method of forming a tray bonded to a collar forming an outwardly extending peripheral flange on the tray where the collar has depending tabs from the flange forming portion that are bonded to the inside surface of the peripheral wall of the tray.

Response to Arguments

32. Applicant's arguments filed February 10, 2004 have been fully considered but they are not persuasive.

Applicant argues on page 20 that Chazal does not disclose a tray with a bottom and a peripheral sidewall to which the flange forming collar is attached, but instead a part with spaced apart tabs. The part in Chazal is a tray and has peripheral side walls, thus meeting the limitations of the claims as currently written. The claims do not require that the side wall be continuous throughout the entire periphery of the bottom part.

Applicant argues on page 21 that the application requires that the preformed tray is first erected and then the collar is positioned against the preformed tray peripheral wall and bonded thereto. The claims do not specifically require the tray to be formed prior to the positioning of the collar on the tray.

Conclusion

33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gladys J Piazza Corcoran whose telephone number is (571) 272-1214. The examiner can normally be reached on M-F 8am-5:30pm (alternate Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gladys JP Corcoran
Examiner
Art Unit 1733

GJPC